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| 10/729,713 | 12/05/2003 | Annette D. Bravard | P052444US00 | 2666 |

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| EXAMINER |
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SOOHOO, TONY GLEN

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| ART UNIT | PAPER NUMBER |
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1723

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,713

Applicant(s)

BRAVARD ET AL.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,8-12,14-17,19 and 21-27 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,5,8-12,14-17,19 and 21-27 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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DETAILED ACTION

Claim interpretation

1. The phrase "outwardly and then an inwardly curved profile" is imprecise and is read broadly as best understood to define: *outwardly curved profile*- as the curvature progresses from a smaller diameter to a maximum diameter and *inwardly curved profile*- the curvature progresses from a maximum diameter to a smaller diameter.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5, 9, 10, 11, 12, 19, 21, 22, 23, 24, 25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall 1,036,489.

Hall 1036489 in figure 3 shows a base 1 with an electric motor 9, a rotating plate knife blade 35, 35 rotated by the motor through the shaft 20, and a body 8,15, having a 1st value diameter/area, and outward curvature to a maximum 2nd value diameter/area, and an inward curvature to another 3rd value diameter/area, and a handle 42 on the body.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

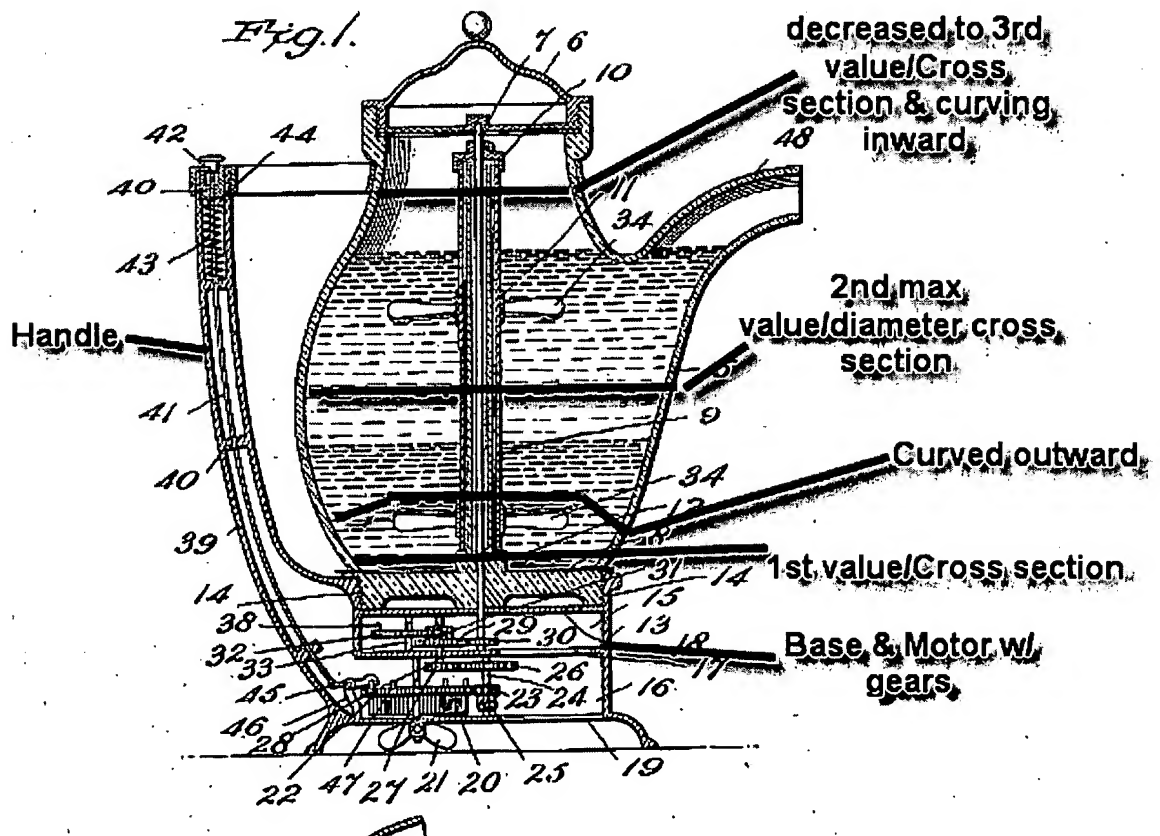
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 5, 9, 10, 11, 12, 19, 21, 22, 23, 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Santicola 1219491 in view of Nissman 3315946.

The Santicola (previously cited) patent, discloses a blender jar 5 for use inherently with a blender base 15, 19, 17 and blender motor drive 30, blade 34, in which the jar with has a cross section with the relative reduced cross sections and curved direction from the ends as pointed out in the claims. See markup of figure below



The Santicola reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of having a base with an electric motor.

The Nissman reference discloses a blender jar 11 have a knife blade 16 disposed in the blender jar for mixing and comminuting food which is powered by an electric motor in a base 12, column 2, line 20-23.

In view of the teaching of Nissman that a blender jar usually has a bladed knife and an electric motor base for blending and driving the blades for blending, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the blender jar of Santicola with an electric motor base for blending and driving the blades such that the blending jar may be able to provide blending as required by the title of the invention of a "blender" jar.

6. Claims 1, 5, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, 21, 22, 23, 24, 25, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable Barker 5823672 in view of Hall 1036489 and Safely 384719.

The Barker reference discloses a blender with a blade C-G, a vessel body 10, 12, with a handle 11, and internal ribs 17 which is connected to an electric motor in base (not shown).

The Barker reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of having the shape of the vessel having a 1st

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value diameter/area, and outward curvature to a maximum 2nd value diameter/area, and an inward curvature to another 3rd value diameter/area.

The Hall 1036489 in figure 3 shows a base 1 with an electric motor 9, a rotating plate knife blade 35, 35 rotated by the motor through the shaft 20, and a body 8,15, having a 1st value diameter/area, and outward curvature to a maximum 2nd value diameter/area, and an inward curvature to another 3rd value diameter/area, and a handle 42 on the body which provides an advantageous continuous circulation of the flow of material in the vessel, page 2, lines 10-16, from the walls back into the center of the receptacle vessel.

The Safely reference also recognizes and teaches the use of a body having a 1st value diameter/area, and outward curvature to a maximum 2nd value diameter/area, and an inward curvature to another 3rd value diameter/area, to also provide a flow of material along the walls and back into the center of the vessel, see page 1, lines 62-70.

In view of the teachings of both Hall and Safely that a receptacle body shaped with a shape of the vessel having a 1st value diameter/area, and outward curvature to a maximum 2nd value diameter/area, and an inward curvature to another 3rd value diameter/area, provides and advantageous flow of material back in towards the center agitator tool, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the shape of the container of Barker into the shape shown by the Hall and Safeley reference so as to provide a better flow and continuous circulation of the material for processing by the blade of Barker.

Double Patenting

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Applicant is advised that should claims 1, 5, 8, and 9 be found allowable, claims 10, 11, 12, 14; and 15, 16, 17; and 19, 21, 22; and 23-27 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

If applicant believes that there is an distinct difference in scope, applicant is advised to point out the scope of differences between the groupings of the independent claims

Response to Arguments

9. Applicant's arguments with respect to claims 1, 5, 8, 9-12, 14-17, 19, 21-27 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following show various shapes of mixing vessels: Hacmac 2162348, Nissman 3315946, Rolph 1948431, .

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272-1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo
Primary Examiner
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